

### REMARKS

Claims 17-24 are currently pending, wherein claims 17, 19, 21, and 23 have been amended to even more clearly define the present invention. Favorable reconsideration is respectfully requested in view of the remarks presented herein below.

In paragraph 3 of the Office Action ("Action"), the Examiner rejects claims 17-19 and 21-23 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 5,835,493 to Magee et al. ("Magee"). Applicant respectfully traverses this rejection.

It is well known that in order to support a rejection under 35 U.S.C. §102, the cited reference must teach each and every claimed element.. Thus, if the cited reference fails to teach or suggest one or more elements, then the rejection is improper and must be withdrawn. In the present case, claims 17-19 and 21-23 are not anticipated by Magee for at least the reason that Magee fails to teach *preferentially* multiplexing selected media information packets containing program clock information as recited in independent claims 17, 19, 21, and 23 from which claims 18 and 22 variously depend.

Magee discloses an MPEG transport stream remultiplexer for communicating plural programs. The multiplexing apparatus provides means for remultiplexing one or more higher layered transport streams to selectively include one or more programs, or elementary streams of programs, carried therein. The remultiplexer utilizes the PID's of inputted transport packets as a basis for extracting, capturing, discarding and replacing inputted transport packets. However, Magee fails to disclose *preferentially* multiplexing selected media information packets containing program clock information as recited in independent claims 17, 19, 21, and 23.

The Examiner asserts that Magee teaches *preferentially* multiplexing selected media information packets containing clock information in as much as Magee teaches a PCR fixer 230 for outputting a corrected PCR. To support this assertion, the Examiner points to column 14, line 66 to column 15, line 32 of Magee. Although, Magee discloses that the DM bus section 300 examines the transport packet to determine whether or not a PCR is contained therein and if so, issues a control signal to cause PCR fixer 230 to output a corrected PCR, nowhere in the cited passage or elsewhere in Magee is there any disclose of packets containing a PCR being *preferentially* multiplexed as claimed. Therefore, Magee fails to disclose each and every claimed

element. Accordingly, Applicant respectfully requests that the rejection of claims 17-19 and 21-23, based on Magee, be withdrawn.

In paragraph 5 of the Action, the Examiner rejects claims 20 and 24 under 35 U.S.C. § 103(a) as being unpatentable over Magee in view of U.S. Patent No. 6,901,209 to Cooper et al. ("Cooper"). Applicant respectfully traverses this rejection.

In order to support a rejection under 35 U.S.C. § 103, the Examiner must establish a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness three criteria must be met. First, there must be some motivation to combine the cited references. Second, there must be a reasonable expectation of success. Finally, the combination must teach each and every claimed element. In the present case, claims 20 and 24 are not rendered unpatentable by the combination of Magee and Cooper for at least the reason that the combination fails to disclose each and every claimed element as discussed below.

Claims 20 and 24 depend from independent claims 19 and 23 respectfully. Therefore, claims 20 and 24 are patentable over Magee for at least those reasons presented above with respect to claims 19 and 23. Cooper discloses a method and apparatus for allowing a user to select and view one or multiple programs at random. However, nowhere in Cooper is there any disclosure of multiplexing modified control information packets and selected media information packets from media streams to produce a multiplexed media stream, wherein media information packets containing program clock information are preferentially multiplexed as claimed.

Since the combination of Magee and Cooper both fail to disclose or suggestion disclose *preferentially* multiplexing selected media information packets containing program clock information as claimed, the combination of these two references cannot possibly disclose or suggest said feature. Therefore, even if one skilled in the art were motivated to combine Magee and Cooper, the combination would still fail to render claims 20 and 24 unpatentable because the combination fails to disclose each and every claimed element. Applicant respectfully request reconsideration and withdrawal of the rejection of claims 20 and 24 under 35 U.S.C. § 103.

The application is in condition for allowance. Notice of same is earnestly solicited. Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Penny Caudle Reg. No. 46,607 at the telephone

number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: January 16, 2009

Respectfully submitted,

By Penny Caudle #46,607  
Michael K. Mitter  
Registration No.: 29,680  
BIRCH, STEWART, KOLASCH & BIRCH, LLP  
8110 Gatehouse Road  
Suite 100 East  
P.O. Box 747  
Falls Church, Virginia 22040-0747  
(703) 205-8000  
Attorney for Applicant